

REMARKS

Claims 10-13 and 22 were previously canceled.

Claims 1-9, 14-21 and 23 are currently pending.

Claims 4 and 14-20 have been withdrawn.

Claims 1 and 3 have been amended to correct the grammar by replacing “on the” with “from the.”

Claim 21 has been amended to clearly indicate that SEQ ID NO:1 has at least one mutation selected from the list provided.

No new matter has been added.

Claim Objections

The Examiner has objected to claim 1 and 3 for recitation of the phrase “on the genomic...” (emphasis added) and suggests replacing “on” with “from.” Applicants have made the requested change, thereby overcoming the objection.

Claim Rejections – 35 USC § 102

The Examiner has rejected claims 1-3, 5-9, 21 and 23 as anticipated by Date et al. The Examiner acknowledges that this rejection is possible because no certified translation of the priority documents has been provided. He also acknowledges that proper translations would overcome this rejection.

The Examiner has also rejected claim 21, stating that the claim language “a nucleotide sequence” is considered to be permissive language that could encompass a fragment of any size of SEQ ID NO:1. The Examiner suggests amending the claim language to remove this possibility.

Applicants have attached hereto English translations of the Japanese priority documents along with a Declaration by the translator certifying that the translation is a true and correct translation into English. In addition, Applicants have amended claim 21 to clearly indicate that SEQ ID NO:1 has at least one mutation selected from the list provided. Applicants therefore submit that the rejections have been overcome.

Rejoinder Under MPEP 821.04

Applicants submit that the examined claims are in order for allowance and respectfully request the Examiner to rejoin the withdrawn claims and expand his search to include other species.

Conclusion

In view of the above remarks, all of the claims are submitted as defining non-obvious, patentable subject matter. Reconsideration of the rejections and allowance of the claims are respectfully requested. Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Susan W. Gorman, Ph.D. Reg. No. 47,604 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: July 30, 2010

Respectfully submitted,

By 

Susan W. Gorman
Registration No.: 47,604
BIRCH, STEWART, KOLASCH & BIRCH, LLP
12770 High Bluff Drive
Suite 260
San Diego, California 92130
(858) 792-8855
Attorney for Applicant

Attachments: English translation of Japanese Patent Application No. 148242/2003 and
Declaration of Ms. Akiko Kosemura certifying translation
English translation of Japanese Patent Application No. 329115/2003 and
Declaration of Ms. Akiko Kosemura certifying translation